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ARIZONA SUPREME COURT

| | | |
|--|---|------------------------------------|
| In the matter of: |) | |
| |) | |
| PETITION TO AMEND RULES |) | Supreme Court No. <u>R-19-0038</u> |
| 11.5, 26.11, 29.1, 30.1, 30.2, 39, AND 41, |) | |
| OF THE RULES OF CRIMINAL |) | COMMENT |
| PROCEDURE |) | |
| _____ |) | |

Pursuant to Rule 28 of the Rules of the Supreme Court, Jerry G. Landau, in his capacity as Chair of this Court's Post-Conviction Actions Task Force, respectfully files this Comment to recommend alternatives for the proposed changes to Criminal Forms 31(a), 32(a), and 32(b).

The Chief Justice established the Post-Conviction Actions Task Force in Administrative Order No. 2018-52, and directed the Task Force to, *inter alia*, examine and recommend changes to statutes and rules relating to the setting aside of criminal convictions and restoration of civil rights. In addition to several legislative proposals, the Task Force has developed updates to several forms contained within the Rules of Criminal Procedure that are also the subject of R-19-0038. Rather than wait for a new rule cycle, the Task Force would like to propose its version of these

same forms by way of this Comment. The Task Force’s recommendations for these forms include the legislatively-driven changes requested in R-19-0038, but make additional minor modifications, primarily to add clarity.

1. Form 31(a) Application to Set Aside Conviction and Form 32(a) Application to Restore Civil Rights and Firearm Rights

The Task Force heard from judicial officers that offering applicants a “[] Yes or [] No” check box to indicate whether they meet the various eligibility criteria for these applications will make it more likely that applicants will include all necessary information; both of the application forms were re-formatted with that in mind.

Section IV of Form 31(a) and Section VI of Form 32(a) currently ask applicants whether they have an “active warrant.” Applicants may not be able to provide an accurate answer to this question; in addition, there is no statutory requirement that this information be included in the application, and the judge has other more reliable sources for this information. The Task Force is proposing to remove this from the applications.

The Task Force’s major addition to Form 32(a) appears in Section VII regarding firearm rights. The Task Force expanded the “Note” explaining exceptions to eligibility for restoration of firearm rights by listing the “serious offenses” identified in ARS § 13-706 that bar an application for restoration of firearm rights for ten years following the defendant’s absolute discharge (ARS §13-910). The current form also asks applicants to state whether they were convicted of

either a “serious” or “dangerous” offense and whether either two years or ten years has passed since their discharge from prison or probation. The court will have access to the most accurate record of this information. Therefore, the Task Force has removed items 1 through 3 under Section VII.

2. Form 32(b) Order Regarding Application to Restore Civil Rights and Firearm Rights

The Task Force changed the phrase “possess or own a firearm” that appears throughout this form to “possess and carry a firearm, adopting the language of the statute.”

It also broke out the court’s order with respect to restoring civil rights from restoring firearm rights for those applications that only request restoration of one or the other right.

Finally, the Task Force has added the following warning above the judge’s signature block:

Even if you are granted the right to possess and carry a firearm pursuant to this order you may still be prohibited from possessing and carrying a firearm under other state or federal laws.

For the reasons stated above, the Task Force requests the Court amend Rule 41 by abrogating Criminal Forms 31(a), 32(a), and 32(b) and replace them with the attached forms.

Respectfully submitted this 4th day of October, 2019.

By /s/ _____
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COURT
IN _____ **COUNTY, ARIZONA**

Form 31(a). Application to Set Aside Conviction

State of Arizona

Case Number: _____

-vs-

Defendant (FIRST, MI, LAST)

Date of Birth: _____

Applicant is:

☐ Defendant

☐ Attorney for Defendant

☐ Probation Officer

**APPLICATION TO SET ASIDE
CONVICTION (A.R.S. § 13-905)**

Note: Your application may entitle you to restoration of the right to possess and carry a firearm pursuant to A.R.S. § 13-905(J)

SECTION I. CONVICTION(S)

A Judgment of Guilt was entered in the _____ Court against the defendant, on the _____ day of _____, _____ on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

☐ Additional counts continue on a separate page.

SECTION II. SENTENCE COMPLIANCE

1. I have complied with all required terms of the **sentence** (including all probation, employment, classes, community service, victim restitution or other monetary obligations, drug/alcohol testing, or other requirements). ☐ **Yes** ☐ **No**. If no, please explain:

2. I received a certificate of absolute discharge from the Arizona Department of Corrections
☐ **Yes** ☐ **No**.

3. Victim restitution [] **has** [] **has not** been paid in full or [] **was not ordered**.

If victim restitution has not been paid in full, please explain:

4. All other court-ordered monetary obligations [] **have** [] **have not** been paid in full or [] **were not ordered**.

If all other monetary obligations have not been paid in full, please explain:

In some circumstances, you may be eligible to apply to the court to modify the amount owed or convert monies owed to community service.

SECTION III. PRIOR SET ASIDE(S)

5. Have you previously applied to set aside any conviction? [] **Yes** [] **No**. If so, what was the date of your last application? _____
6. Have you previously been granted a set aside? [] **Yes** [] **No**.
7. Have you previously been denied a set aside? [] **Yes** [] **No**.

SECTION IV. PENDING CASES

8. Are there any open criminal cases against you? [] **Yes** [] **No**. If yes, please explain:

SECTION V. OTHER INFORMATION FOR THE COURT

9. Is there anything you would like the court to take into consideration?

10. ☐ Attached is other pertinent documentation. List attached documents.

11. The defendant, prosecutor, or the victim may request a hearing, the court is not required to set a hearing. Do you request a hearing? ☐ **Yes** ☐ **No**.

I understand that even if I am granted the right to possess and carry a firearm pursuant to this application I may still be prohibited from possessing and carrying a firearm under other state or federal laws.

I understand that this application may be denied if information in this application is found to be inaccurate.

I declare under penalty of perjury that, to the best of my knowledge, the information provided in this application is true and correct.

Print Defendant's Name

Defendant's Signature

Address

OR

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize _____ ☐ attorney or ☐ probation officer to petition the
_____ Court in _____ County, to take the above-indicated action.

Date

Defendant's Signature

To the best of my knowledge, the information provided in this application is true and correct.

Print Attorney/Probation Officer Name

Attorney/Probation Officer Signature

Attorney/Probation Officer Address

COURT
IN _____ **COUNTY, ARIZONA**

Form 32(a). Application to Restore Civil Rights and Firearm Rights

State of Arizona

Case Number: _____

-VS-

APPLICATION TO: (check all that apply)

Defendant (FIRST, MI, LAST)

☐ **RESTORE CIVIL RIGHTS**
(A.R.S. §§ 13-906 and 13-908)

Date of Birth: _____

☐ **RESTORE FIREARM RIGHTS**
(A.R.S. § 13-910)

Applicant is:

☐ Defendant

☐ **REQUEST FOR
RECONSIDERATION**

☐ Attorney for Defendant

(For applications previously denied)

☐ Probation Officer

☐ Civil Rights ☐ Firearm Rights

SECTION I. CONVICTION(S)

A Judgment of Guilt was entered in the _____ Court against the
defendant, on the _____ day of _____, _____ on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

☐ Additional counts continue on a separate page.

SECTION II. STATE CONVICTION (For federal convictions, see SECTION III.)

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid any victim restitution imposed; however, your right to possess and carry a firearm requires an application under this rule. Refer to the **Note in Section VII** of this application.

1. The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state and this application is for restoration of the right to possess and carry a firearm only.

☐ **Yes** ☐ **No.**

2. ☐ I received a certificate of absolute discharge from the **Arizona Department of Corrections**

AND have attached a copy of that certificate to this petition, if available.

OR

3. ☐ I was discharged from **probation** and I have complied with all required terms of **probation** (including all employment, classes, community service, drug/alcohol testing, or other requirements other than court-ordered monetary obligations).

OR

☐ I was discharged from **probation** and I have **not complied** with all terms of my probation.
Explain:

SECTION III. FEDERAL CONVICTION (For state convictions, see SECTION II.)

4. A Judgment of Guilt was entered against the defendant in United States District Court for the District of _____ on the _____ day of _____, _____.

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid any victim restitution imposed; however, your right to possess and carry a firearm requires an application under this rule. Refer to the **Note in Section VII** of this application. This applies to federal first convictions as well.

5. The above stated judgment of guilt and conviction for a felony is **my first felony conviction** in this or any other state and this application is for restoration of the right to possess and carry a firearm only. ☐ **Yes** ☐ **No**.
6. ☐ I was sentenced to a term of **federal probation**, received an Affidavit of Discharge from the judge who discharged me from probation or other official documentation that indicates successful discharge from probation, **AND** have attached a copy to this petition.

OR

☐ I was sentenced to and successfully **served a federal prison term** and received a Certificate of Absolute Discharge, or other official documentation that indicates successful discharge from imprisonment, from the Federal Bureau of Prisons on a date two (2) or more years before today's date, **AND** I have attached a copy of the certificate. If it is impossible to obtain the Certificate of Absolute Discharge from the Federal Bureau of Prisons please explain:

-
-
7. [] I have complied with all required terms of **probation** (including all employment, classes, community service, victim restitution or other monetary obligations, drug/alcohol testing, or other requirements).

OR

[] I have **not complied** with all terms of probation. Explain:

SECTION IV. VICTIM RESTITUTION AND OTHER COURT-ORDERED MONETARY OBLIGATIONS

8. Victim restitution [] **has** [] **has not** been paid in full or [] **was not ordered**. If victim restitution has not been paid in full, please explain:

-
-
-
-
9. All other monetary obligations [] **have** [] **have not been** paid in full or [] **were not ordered**. If all other monetary obligations have not been paid in full, please explain:

In some circumstances you may be eligible to apply to the court to modify the amount owed or convert monies owed to community service. (State offenses only, not for federal convictions.)

SECTION V. PRIOR RESTORATION OF RIGHTS

10. Have you previously applied to have your rights restored? [] **Yes** [] **No**. If so, what was the date of your last application? _____
11. Have you been granted the restoration of your rights previously? [] **Yes** [] **No**.
12. Have you been denied the restoration of your rights previously? [] **Yes** [] **No**.

SECTION VI. PENDING CASES

13. Are there any open criminal cases against you? [] **Yes** [] **No**.
- If yes, please explain:

SECTION VII. RESTORATION OF FIREARM RIGHTS

NOTE: Arizona Revised Statutes require:

A person who is convicted of a dangerous offense under A.R.S. § 13-704 or an offense committed in another state that would be a dangerous offense under A.R.S. § 13-704 if committed in this state may not file for the restoration of the right to possess and carry a firearm. A “dangerous offense” is defined under A.R.S. § 13-105(13), as “an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.”

A person who is convicted of a serious offense as defined in A.R.S. § 13-706 or an offense committed in another state that would be a serious offense as defined in A.R.S. § 13-706 if committed in this state may not file for the restoration of the right to possess and carry a firearm for **ten (10) years** from the date of the person’s absolute discharge. For the purpose of this section, a “serious offense” is defined in A.R.S. § 13-706(F)(1) as any one of the following offenses:

| | | |
|---|--------------------------------------|--|
| First degree murder | Sexual assault | Burglary in the first degree |
| Second degree murder | Any dangerous crime against children | Kidnapping |
| Manslaughter | Arson of an occupied structure | Sexual conduct with a minor under fifteen years of age |
| Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument. | Armed robbery | Child sex trafficking |

A person who is convicted of any other felony offense may not file for the restoration of the right to possess a firearm for **two (2) years** from the date of the person’s absolute discharge from imprisonment or discharge from probation.

Your application to restore firearm rights may be denied if you were convicted of one of the excluded offenses or the time since your discharge from probation or imprisonment does not meet the statutory

14. If you are requesting that your civil right to possess and carry a firearm be restored, please explain your reasons for the request below:

SECTION VIII. OTHER INFORMATION FOR THE COURT

Is there anything you would like the court to take into consideration?

15. Attached is other pertinent documentation. List attached documents:

I understand that even if I am granted the right to possess and carry a firearm pursuant to this application I may still be prohibited from possessing and carrying a firearm under other state or federal laws.

I understand that this application may be denied if information in this application is found to be inaccurate.

I declare under penalty of perjury that the information provided in this application and any attachments is true and correct.

Print Defendant's Name

Defendant's Signature

Address

OR

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize _____ [☐] attorney or [☐] probation officer to petition the _____ Court in _____ County, to take the above-indicated action.

Date

Defendant's Signature

To the best of my knowledge, the information provided in this application is true and correct.

Print Attorney/Probation Officer Name

Attorney/Probation Officer Signature

Attorney/Probation Officer Address

IN _____ COURT
COUNTY, ARIZONA

**Form 32(b). Order Regarding Application to Restore
Civil Rights and Firearm Rights**

State of Arizona

Case Number: _____

-vs-

Defendant (FIRST, MI, LAST)

Date of Birth: _____

**ORDER REGARDING APPLICATION
TO RESTORE CIVIL RIGHTS
AND FIREARM RIGHTS**

(A.R.S. §§ 13-906, 13-908, and 13-910)

Based on the information presented to the court, **THE COURT FINDS:** (only those items marked)

- ☐ The prosecutor has received a copy of the Application to Restore Civil Rights and Right to Possess and carry a Firearm.
- ☐ The defendant **has met** the statutory requirements for the application to restore civil rights.
- ☐ The defendant **has met** the statutory requirements for the application to restore right to possess and carry a firearm.
- ☐ The defendant **has not met** the statutory requirements for the application to possess and carry a firearm for the following reason:
 - ☐ The defendant was convicted of a **dangerous** offense as defined in A.R.S. § 13-704.
 - ☐ The defendant was convicted of a **serious** offense as defined in A.R.S. § 13-706 and **less than ten years** have passed from the date of discharge from probation or prison.
 - ☐ The defendant was convicted of any other felony offense and **less than two years** have passed from the date of discharge from probation or prison.

IT IS ORDERED:

- ☐ GRANTING the application to restore civil rights **and** right to possess and carry a firearm.
- ☐ GRANTING the application to restore civil rights **excluding** the right to possess and carry a firearm.
- ☐ GRANTING the application to restore the right to possess and carry a firearm.
- ☐ DENYING the application to restore civil rights and right to possess and carry a firearm for the following reasons:
 - ☐ The applicant **has not met** the statutory requirements for the application (as noted above):
 - ☐ Other reasons: _____

Even if you are granted the right to possess and carry a firearm pursuant to this order you may still be prohibited from possessing and carrying a firearm under other state or federal laws.

Dated this _____ day of _____, _____

Judicial Officer